



Reprinted  
February 22, 2005

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## HOUSE BILL No. 1222

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DIGEST OF HB 1222 (Updated February 21, 2005 6:14 pm - DI 103)

**Citations Affected:** IC 4-22.

**Synopsis:** Small business regulatory coordinator. Requires a state agency to assign a small business regulatory coordinator for each administrative rule proposed or adopted by the agency. Requires the agency to list the coordinator's contact information in certain published notices and rules. Requires the coordinator to: (1) serve as a liaison between the agency and small businesses subject to the rule; (2) provide guidance to small businesses in complying with the rule; and (3) keep a record of all comments, questions, and complaints received from small businesses. Requires the agency's director to submit an annual report to the legislative council and the office of economic development concerning: (1) the number of comments, questions, and complaints received from small businesses; and (2) the agency's costs of providing the required services to small businesses; during the state fiscal year. Provides that a small business that gives voluntary notice to an agency of a violation of a rule is immune from civil or criminal liability resulting from an agency action relating to the rule violation if the small business: (1) provides the notice within 45 days after discovering the violation; (2) acts promptly to achieve compliance and remediate the effects of the noncompliance; and (3) cooperates with any investigation by the agency. Provides that immunity is not available if: (1) the violation resulted in serious harm or endangered the public; (2) the small business received a competitive advantage; or (3) the small business has a pattern of rule violations. Provides that certain information provided by a small business relating to a rule violation is confidential. Provides that voluntary notice of a rule violation by a small business is not admissible as evidence, other than in an agency proceeding, to prove liability.

**Effective:** July 1, 2005.

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### Koch, Mays

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January 6, 2005, read first time and referred to Committee on Commerce, Economic Development and Small Business.  
February 14, 2005, reported — Do Pass.  
February 21, 2005, read second time, amended, ordered engrossed.

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HB 1222—LS 7753/DI 101+



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First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

## HOUSE BILL No. 1222

A BILL FOR AN ACT to amend the Indiana Code concerning state offices and administration.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 4-22-2-28.1 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2005]: **Sec. 28.1. (a) This section applies to a rule for which the**  
4 **notice required by IC 4-22-2-23 is published by an agency after**  
5 **June 30, 2005.**

6       **(b) As used in this section, "coordinator" refers to the small**  
7 **business regulatory coordinator assigned to a rule by an agency**  
8 **under subsection (e).**

9       **(c) As used in this section, "director" refers to the director or**  
10 **other administrative head of an agency.**

11       **(d) As used in this section, "small business" means any person,**  
12 **firm, corporation, limited liability company, partnership, or**  
13 **association that:**

14           **(1) is actively engaged in business in Indiana and maintains its**  
15           **principal place of business in Indiana;**

16           **(2) is independently owned and operated;**

17           **(3) employs one hundred (100) or fewer full-time employees;**

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and

(4) has gross annual receipts of five million dollars (\$5,000,000) or less.

(e) For each:

(1) rulemaking action; and

(2) rule finally adopted as a result of a rulemaking action;

by an agency under this chapter, the agency shall assign one (1) staff person to serve as the agency's small business regulatory coordinator with respect to the proposed or adopted rule. The agency shall assign a staff person to a rule based on the person's knowledge of, or experience with, the subject matter of the rule. A staff person may serve as the coordinator for more than one (1) rule proposed or adopted by the agency if the person is qualified by knowledge or experience with respect to each rule. In the case of a proposed rule, the agency's notice of intent to adopt a rule under section 23 of this chapter must include the name, address, telephone number, and e-mail address of the small business coordinator for the proposed rule. In the case of a rule finally adopted by the agency, the final rule, as published in the Indiana Register and the Indiana Administrative Code, must include the name, address, telephone number, and electronic mail address for the coordinator.

(f) The coordinator shall serve as a liaison between the agency and any small business subject to regulation under the rule. The coordinator shall provide guidance to small businesses affected by the rule on the following:

(1) Any requirements imposed by the rule, including any reporting, record keeping, or accounting requirements.

(2) How the agency determines or measures compliance with the rule, including any deadlines for action by regulated entities.

(3) Any penalties, sanctions, or fines imposed for noncompliance with the rule.

(4) Any other concerns of small businesses with respect to the rule, including the agency's application or enforcement of the rule in particular situations.

(g) The coordinator shall provide guidance under this section in response to questions and concerns expressed by small businesses affected by a rule. The coordinator may also issue general guidelines or informational pamphlets to assist small businesses in complying with the rule. Any guidelines or informational pamphlets issued under this subsection must be made available:

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(1) for public inspection and copying at the offices of the agency under IC 5-14-3; and

(2) electronically through the electronic gateway administered by the intelenet commission.

(h) The coordinator shall keep a record of all comments, questions, and complaints received from small businesses with respect to a rule. The coordinator shall deliver the record, along with any accompanying documents submitted by small businesses, to the director not later than:

(1) ten (10) days after the date the rule is file stamped by the secretary of state under section 35 of this chapter; and

(2) before July 15 of each year the rule remains in effect.

The coordinator and the director shall keep confidential any information concerning a small business to the extent the information is exempt from public disclosure under IC 5-14-3-4.

(i) Not later than November 1 of each year, the director shall:

(1) compile the records received from all of the agency's coordinators under subsection (h);

(2) prepare a report summarizing:

(A) the number of comments, complaints, and questions received by the agency from small businesses during the most recent state fiscal year, categorized by the subject matter of the rules involved;

(B) the number of complaints or questions reported under clause (A) that were resolved to the satisfaction of the agency and the small businesses involved;

(C) the total number of staff serving as coordinators under this section during the most recent state fiscal year;

(D) the agency's costs in complying with this section during the most recent state fiscal year; and

(E) the projected budget required by the agency to comply with this section during the current state fiscal year; and

(3) deliver the report to the legislative council in an electronic format under IC 5-14-6 and to the office of economic development established by IC 4-1.5-7-1.

SECTION 2. IC 4-22-2-28.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 28.2. (a) This section applies to a violation described in subsection (c) that occurs after June 30, 2005.

(b) As used in this section, "small business" has the meaning set forth in section 28.1(d) of this chapter.

(c) Except as provided in subsection (d), a small business that

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1 voluntarily provides notice to an agency of the small business's  
 2 actual or potential violation of a rule adopted by the agency under  
 3 this chapter is immune from civil or criminal liability resulting  
 4 from an agency action relating to the violation if the small business  
 5 does the following:

6 (1) Provides written notice of the violation to the agency not  
 7 later than forty-five (45) days after the small business knew or  
 8 should have known that the violation occurred.

9 (2) Acts to:

10 (A) initiate an appropriate, good faith effort to:

11 (i) achieve compliance with the rule; and

12 (ii) remediate the effects, if any, of noncompliance;

13 (B) pursue compliance with due diligence; and

14 (C) promptly correct the noncompliance after discovering  
 15 the violation.

16 (3) Cooperates with any reasonable request by the agency in  
 17 any investigation initiated in response to the notice.

18 (d) A small business is not immune from civil or criminal  
 19 liability relating to the violation if any of the following apply:

20 (1) The violation resulted in serious harm or in imminent and  
 21 substantial endangerment to the public health, safety, or  
 22 welfare.

23 (2) The violation resulted in a substantial economic benefit  
 24 that afforded the small business a clear advantage over the  
 25 small business's competitors.

26 (3) The small business has a pattern of continuous or repeated  
 27 violations of the rule at issue or any other rules of the agency.

28 (e) Information provided by a small business, including  
 29 activities and documents that identify or describe the small  
 30 business, to an agency in providing notice of the small business's  
 31 actual or potential violation of a rule adopted by the agency is  
 32 confidential, unless a clear and immediate danger to the public  
 33 health, safety, welfare or environment exists. Information  
 34 described in this subsection may not be made available for use by  
 35 the agency for purposes other than the purposes of this section  
 36 without the consent of the small business.

37 (f) Voluntary notice of an actual or a potential violation of a rule  
 38 provided by a small business under subsection (c) is not admissible  
 39 as evidence in a proceeding, other than an agency proceeding, to  
 40 prove liability for the rule violation or the effects of the rule  
 41 violation.

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Commerce, Economic Development and Small Business, to which was referred House Bill 1222, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

BORROR, Chair

Committee Vote: yeas 11, nays 0.

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## HOUSE MOTION

Mr. Speaker: I move that House Bill 1222 be amended to read as follows:

Page 4, line 3, delete "the imposition of any".

Page 4, line 4, delete "penalty that could be imposed for" and insert **"liability resulting from an agency action relating to"**.

Page 4, line 10, after "to" insert ":

**(i)"**.

Page 4, line 11, after "rule;" insert **"and**

**(ii) remediate the effects, if any, of noncompliance;"**.

Page 4, line 17, delete "the imposition of a".

Page 4, line 18, delete "penalty that could be imposed for" and insert **"liability relating to"**.

Page 4, after line 27, begin a new paragraph and insert:

**"(e) Information provided by a small business, including activities and documents that identify or describe the small business, to an agency in providing notice of the small business's actual or potential violation of a rule adopted by the agency is confidential, unless a clear and immediate danger to the public health, safety, welfare or environment exists. Information described in this subsection may not be made available for use by the agency for purposes other than the purposes of this section without the consent of the small business.**

**(f) Voluntary notice of an actual or a potential violation of a rule provided by a small business under subsection (c) is not admissible as evidence in a proceeding, other than an agency proceeding, to prove liability for the rule violation or the effects of the rule violation."**

(Reference is to HB 1222 as printed February 15, 2005.)

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